

Serial No. 09/307,187

Remarks

This is a Continued Examination application. By the present Amendment, claims 9, 11, 24-26, 42, and 67 have been cancelled and claims 84-92 have been added. Accordingly, claims 1-8, 10, 12-23, 27-41, 43-66, and 68-92 are now pending in the application.

Claim 7 is objected to for an informality identified in paragraph 5 of the Office Action. Accordingly, claim 7 has been amended as required in the Office Action.

In the Office Action mailed September 23, 2003, claims 1-8, 10-23 and 27-83 are finally rejected under 35 U.S.C. § 103(a) over U.S. Pat. No. 5,111,391, *Fields et al.* ("*Fields*"). The rejection, insofar as it may be applied to the claims as amended, is respectfully traversed for the reasons indicated below. Reconsideration of the application and withdrawal of the rejection is respectfully requested.

For the reasons including, inter alia, those discussed below, each of independent claims 1, 31 and 58 is patentable over the applied reference. Applicant's prior arguments are hereby incorporated by reference. Further, claims dependent from these independent claims are deemed patentable.

Applicant respectfully traverses the rejection of the claims under 35 U.S.C. § 103(a) over U.S. Pat. No. 5,111,391, *Fields et al.* ("*Fields*"). The rejection, insofar as it may be applied to the claims as amended, is respectfully traversed for the reasons indicated below. Reconsideration of the application and withdrawal of the rejection is respectfully requested.

Rejection under 35 U.S.C. § 103(a) over Fields et al. (US Patent Number 5,111,391)

Claim 1-8, 10-23 and 27-83 are stands rejected under 35 USC § 103(a) over *Fields et al.* (U.S. Pat. No. 5,111,391), hereinafter "*Fields*". This rejection, insofar as it may be applied to the present claim, is respectfully traversed, for reasons including the following.

Applicants respectfully traverse the rejection and respectfully submit that the presently claimed invention is not described by *Fields et al.* Applicants discuss the rejection below as it applies to independent claims 1, 31, and 58; dependent claims 2-8, 10, 12-23, 27-30, 32-41, 43-

Serial No. 09/307,187

57, 59-66, and 68-83.

(a) Independent claim 1

Claim 1 states in combination:

A computer-implemented method of ~~allocating~~ dynamically scheduling an arbitrary number of resources including scheduling jobs from among a plurality of resources of a work-producing system, wherein the work-producing system comprises a pharmacy, said method comprising the steps of:

- (a) in a computer system, sorting, in a predetermined order, available resources by a an arbitrary number of tasks from among a plurality of tasks of the work-producing system performable per resource, and rate per task, and determining at least one queue responsive to said sorting, wherein the tasks are subject to an arbitrary number of constraints from among a plurality of constraints of the work-producing system, wherein the rate per task characterizes the processing of pharmaceutical orders processed in the at least one task for a time period, the at least one task including reviewing a pharmaceutical order, filling dispensing a pharmaceutical prescription as part of the pharmaceutical order, and verifying the pharmaceutical order; and
- (b) assigning the available resources to the at least one task from among a plurality of tasks of the work-producing system subject to at least one task constraint from among a plurality of constraints of the work-producing system.

Without conceding that Fields discloses any of the features of the present invention, Fields clearly does not teach a computer-implemented method of dynamically scheduling an arbitrary number of resources from among a plurality of resources of a work-producing system. The Examiner argues that Fields et al. teach a system that can be used to for any type of resource allocation. The Examiner admits that the Fields et al. does not explicitly teach a system comprising a pharmacy and further asserts that it would be "obvious to one of ordinary skill to use the work producing system in a pharmacy...to schedule employees in any type of resource/task environment." Unlike the claimed invention, Fields et al. does not disclose a system that dynamically schedules resources and further, does not disclose a system that dynamically schedules resources in a pharmacy. Fields is only concerned with the "creation of staff schedules at remote locations." In contrast to the claimed invention, Fields et al. considers

-24-

Serial No. 09/307,187

resources as merely "constraint variables" in the "job of creating staff schedules." Further, the combination of features recited in claim 1 are not shown or suggested by the prior art.

The Examiner argues that "rate per task" is taught or suggested by Fields' fixed ratio between units processed in a task and time period. Applicant does not admit that Fields teaches or suggests a rate per task. The Examiner equates units processed to tasks. Moreover, the current and prior Office Actions cite Fields' fixed ratio between units processed in a task and time period as meeting the recitation of rate per task and tasks performable per resource. Clearly, Fields' fixed ratio cannot meet the limitations of two separately claimed elements.

In connection with claim 1, the Examiner states that "distributing pharmaceuticals" is understood to refer to the limitation "filling the pharmaceutical order." The claims have been amended to recite, "dispensing a pharmaceutical prescription as part of the pharmaceutical order." Fields fails to teach or suggest at this recited element. The Examiner therefore is respectfully requested to withdraw the rejection.

As previously explained, staffing a pharmacy is more specialized than simply staffing Fields' "multi-unit retail locations" (col. 1 line 15). One example of several problems identified in the background of the invention concerns "scheduling to substantially optimally staff pharmacies on a day-to-day basis, and more particularly, to solving scheduling problems where resources perform a varying set of tasks and their individual rates (units/man hours) for each task vary." Accordingly, the applicants "have determined that the use of such techniques is new to the managed care, health care and/or pharmacy industry" (specification pages 1, 7-8). The specification discusses, *inter alia*, advantages, as the subject of the inventors' Declaration, and is evidence to be considered in reaching a conclusion as to obviousness. Further, Fields admits "each remote location has unique differences in layout, sales patterns, sales volume, and product mix" and "these differences are further complicated by uniqueness of each day of the week and seasonality of the year." (See *Fields et al.*, Col.1, lines 46-52) ~~Moreover, Fields does not teach or suggest optimally scheduling staff for each day of the week and seasonality of the year.~~ ~~Fields does not teach or suggest a generic software application applied broadly to, for example, mail-~~ The present invention centers around a generic software application applied broadly to, for example, mail-

Serial No. 09/307,187

order and point of sale pharmaceutical distribution, supply chain, and pharmacy benefit management. (specification, Page 24, lines 16-21) Hence, any contention that Fields would be useful in scheduling resources in a pharmacy is nothing more than an impermissible application of hindsight.

The Office Action apparently concedes to applicant's argument that Fields itself teaches away from complex scheduling problems. Fields teaches that creating an optimized staff schedule presents a problem of "linear complexity" (Col. 1, lines 55-57). The prior art must be considered in its entirety, including portions that would lead away from the claimed invention. This is a strong indication that subject matter that is not expressly mentioned in Fields may be included, if at all, only with great difficulty. This must be taken into account when determining patentability, particularly when the Examiner argues that subject matter is "inherent" or "well known" and would have been combined with Fields. Indeed, the Examiner routinely attempts to argue that subject matter is inherent or well known, to the contrary of Fields' teaching away.

In view of the above, Applicants respectfully submit that claim 1 is unobvious over the cited reference and respectfully request that the rejection under 35 U.S.C. § 103(a) of claim 1 be withdrawn.

(b) Dependent Claims 2-8, 10, 12-23, 27-30, 32-41, 43-57, 59-66, and 68-83

With respect to the finally rejected dependent claims 2-8, 10, 12-23, 27-30, 32-41, 43-57, 59-66, and 68-83, Applicants respectfully submit that these claims are not only allowable by virtue of their dependency from independent claim 1, but also because of additional features they recite. The Examiner presents specific arguments with respect to claims 2-8, 10-23 and 27-29. Arguments previously presented by applicants are incorporated herein by reference. The omission of a claim from the following discussion is not to be construed as an admission that the Office Action is correct.

Claim 2, for example, recites a method of "dynamically scheduling an arbitrary number of resources" comprising the step of "redetermining the at least one queue after assignment of the available resources," and "designating the assigned resource unavailable until a

Serial No. 09/307,187

predetermined time when the assigned available resource expires." Unlike the claimed invention, Fields et al. does not disclose a system that dynamically schedules resources. Fields neither teaches nor suggests redetermining the at least one queue after the assignment of available "resources" as claimed, or designating the assigned "resource" as unavailable until a time when the "resource" expires, as further claimed. Fields is concerned with the dividing the "schedule into shifts" by the "process of first placing tasks at the highest skill level and then trying to move the task to a lower skill level. Further, Fields is concerned with employee's skill level and is not concerned with resources. In contrast to the claimed invention, Fields et al. considers resources as merely "constraint variables" in the "job of creating staff schedules." Accordingly, the combination of features recited in claim 2 is submitted to be patentable over the prior art of record.

Claim 5 recites a method of "dynamically scheduling an arbitrary number of resources" according to claim 1, wherein "the at least one task constraint includes at least one team assignment constraint, and the available resources are assigned to the at least one task until the at least one team assignment constraint is satisfied." Unlike the claimed invention, Fields et al. does not disclose a system that dynamically schedules resources. Fields neither teaches nor suggests anything about using a team assignment as a constraint. The Office Action argues that "task constraints include a team assignment constraint such as the skill level of the employee or the relationship between the different tasks." The Examiner further argues that "Fields' workers are working for a common employer; therefore, any constraint affecting the workers on an individual level affects the team of workers as a whole." To the contrary, employee skill level and task relationship are not the equivalent of a team assignment constraint. Fields does not concern itself with teams or team constraints, and accordingly does not even use the word "team". Further, a team constraint only affects the members of that team and does not affect the other teams. Hence, it is respectfully submitted that Claim 5 is neither taught nor suggested by Fields. Accordingly, the combination of features recited in claim 5 is submitted to be patentable over the prior art of record.

Claim 10 recites a method of "dynamically scheduling an arbitrary number of

Serial No. 09/307,187

resources" wherein the resource allocation model "includes entities with variable attributes having variable quantities that transform through at least one network of nodes" and wherein "each node of the at least one network of nodes includes an associated set of attributes and parameters." Fields neither teaches nor suggests that the resource allocation model includes a network of nodes and each node includes an associated set of attributes. Further, unlike the claimed invention, Fields et al. does not disclose a system that dynamically schedules resources. The Office Action specifically cites Fields Col. 6, lines 51-65; however, this reference simply does not teach or suggest a resource allocation model as claimed. Accordingly, the combination of features recited in claim 10 is submitted to be patentable over the prior art of record.

Claims 12-16 depend directly or indirectly from claim 10, and are deemed to be allowable for reasons including those discussed above.

Claim 17 recites that the available resources are characterized by certain information, including "person identifier", "shift assignment by day of week, task preference". Claim 17 further recites that the available resources are characterized by certain information, including "shift name", "eligible tasks", "task name", "rate per task", "task capacity", and "flow percentages between tasks". The Office Action cites Fields Col. 6, lines 49-65; Col. 4, lines 37-48; Col. 3, lines 9-15; Col. 6, lines 51-54; Col. 1, lines 32-45; Col. 6, lines 43-46; Col. 7, lines 18-22; and Col. 6, lines 21-27 as teaching this information to characterize available resources. To the contrary, this portion, does not teach or suggest that available resources are so characterized as claimed, e.g., by person identifier, shift assignment by day of week, task preference, shift name, eligible tasks, task name, rate per task, task capacity, flow percentages between tasks. Claim 17 further recites that the available resources are characterized by certain information, including "projected incoming volume by task and time". The Office Action cites Fields Col. 7, lines 18-22 as teaching this element. To the contrary, this portion references a value 35 (Fig. 3) "which constitutes a projected *total* business demand distributed by hour." This, however, does not teach or suggest that available resources are so characterized as claimed, e.g., by task. Hence this and other elements recited in combination in claim 17 fail to be taught or suggested by the cited reference.

Serial No. 09/307,187

Claim 18 recites that the resources are assigned using, "people allocation: number of people assigned to each task for each time period, volume data: number of RX's processed in each task for each time period, queue data: queue length for each task area by time period, and Gantt chart: person task assignment for each time period." The Office Action cites Fields Col. 6, lines 21-32 as teaching "number of people assigned to each task for each time period". To the contrary, this portion references "Schedule Header Record" that "contains one record per schedule and each record contains summary information of the schedule." This, however, does not teach or suggest that resources are assigned as claimed using the output, "number of people assigned to each task for each time period." Accordingly, the combination of features recited in claim 18 is submitted to be patentable over the prior art of record.

Claim 20 recites a method of "dynamically scheduling an arbitrary number of resources" according to claim 1, wherein "assigning step (b), further comprises the steps of assigning the available resources to the at least one task with a work flow between tasks following a Markov Chain." Unlike the claimed invention, Fields et al. does not disclose a system that dynamically schedules resources. The Examiner admits that Fields does not teach explicitly the use of Markov Chains but argues that one of ordinary skill in the art would be motivated to use Markov Chains as it would "allow the user to easily picture the flow between tasks." To the contrary, Fields does not teach or provide motivation to combine the method of dynamically scheduling resources with the use of Markov chain. Accordingly, the combination of features recited in claim 20 is submitted to be patentable over the prior art of record.

Claim 22 recites a method of "dynamically scheduling an arbitrary number of resources ... according to claim 1, further comprising step of repeatedly performing said steps (a) - (b) until the end of a predetermined time period is reached." Unlike the claimed invention, Fields et al. does not disclose a system that dynamically schedules resources. The Office Action cites Fields Col. 3, lines 46-67 as teaching that the steps "are repeated until closing time of each store location". This rejection is respectfully traversed. For example, Fields states that "certain tasks can only be performed after another task has been completed, but before closing time for that location;" and "During the process of placing a task on a schedule, each group of relations

Serial No. 09/307,187

[between tasks and events] are tested and if no relation is violated in that group, the task is placed on the schedule." Fields merely states the process of defining and testing the relationship between tasks and events before they are placed on a schedule. Fields neither teaches or suggest repeatedly performing the steps of (a) sorting and/or of (b) assigning. Further, the Office Action argues that "Fields tracks resources every 15 minutes on the schedule to determine an item is available for a particular task." To the contrary, Fields does not teach dynamically scheduling resources by repeating the steps of (a) sorting and/or of (b) assigning every 15 minutes. In sum, the reference neither teaches nor suggests that the combination of steps (a) through (b) are performed until the end of a predetermined time period is reached in combination with the remaining features of the claims.

In connection with claims 27 and 28, the Examiner takes notice "that it is old and well-known in the art that tasks in a pharmacy commonly include vertical fills, baker fills, prepack fills," etc. Unlike the claimed invention, Fields et al. does not disclose a system that dynamically schedules resources and further, does not disclose a system that dynamically schedules resources in a pharmacy. Fields is only concerned with the "creation of staff schedules at remote locations." This appears to be an assertion of specific knowledge and therefore must be supported by a citation to some reference work recognized as standard in the pertinent art.¹ The Examiner admits that the applicant is correct that the Examiner would have to provide references to support her use of Official Notice, but argues that this is the case "only if the Applicant makes a seasonable challenge regarding the use of Official Notice." The applicant believes that adequate traverse to the Examiner's assertion of Official Notice have been provided and the Examiner has failed to provide documentary evidence to maintain the rejection. See 37 CFR 1.104(c)(2), MPEP § 2144.03

Claim 29 of the present invention recites, in combination, "normalizing the at least one queue by dividing a current task queue by an average rate of the available resources for each task

¹ In this instance, the Office Action relies on the Examiner's personal knowledge or alleged well known facts. Accordingly, the Examiner is respectfully requested to provide a citation to a reference or an affidavit from the Examiner, or to withdraw the rejection. 37 CFR § 1.104(d)(2). MPEP § 2144.03.

Serial No. 09/307,187

in the current task queue." Both prior Office Actions acknowledge that "Fields do not explicitly teach the method of normalizing". Now, in the present Office Action, the Examiner contends that "Fields et al. teaches all aspects of normalization." The Office Action cites Fields Col. 3, lines 40-45 as teaching "average rate of a group, or queue". To the contrary, this portion references "use of task type flags and task placement flags to improve the performance of each task." The Office Action further cites Fields Col. 5, lines 8-34 as teaching "average rate of a group, or queue". To the contrary, this portion references "Schedule Optimization Phase" that "divides the schedule into different shifts and inserts breaks in the shifts." This, however, does not teach or suggest that normalizing the at least one queue as claimed by "dividing a current task queue by an average rate of the available resources." Moreover, Fields does not teach of an "average rate" as explained by the Examiner. Accordingly, the combination of features recited in claim 29 is submitted to be patentable over the prior art of record.

Claim 30 is deemed to be patentable for reasons including those explained above, and because the Office Action fails to provide specific reasons for rejection.

In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejection and allow the claims.

The Examiner applies the rejections already addressed to dependent claims 32-57 and 59-83. For the reasons discussed above, it is respectfully submitted that claims 32-41, 43-57, 59-66, and 68-83 are patentable over Fields.

(c) Independent Claim 31

Claim 31 stands finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Fields. For the reasons discussed above, it is respectfully submitted that the combination of features recited in claim 31 as amended is patentable over Fields when interpreted as a whole. The Examiner is respectfully requested to withdraw the rejection of claim 31.

(d) Independent Claim 58

Claim 58 stands finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Fields. For the reasons discussed above, it is respectfully submitted that the combination of

Serial No. 09/307,187

features recited in claim 58 as amended is patentable over Fields when interpreted as a whole. The Examiner is respectfully requested to withdraw the rejection of claim 58.

Conclusion

Applicant respectfully submits that, as described above, the cited prior art does not show or suggest the combination of features recited in the claims. Applicant does not concede that the cited prior art shows any of the elements recited in the claims. However, Applicant has provided specific examples of elements in the claims that are clearly not present in the cited prior art.

Applicant strongly emphasizes that one reviewing the prosecution history should not interpret any of the examples Applicant has described herein in connection with distinguishing over the prior art as limiting to those specific features in isolation. Rather, Applicant asserts that it is the combination of elements recited in each of the claims, when each claim is interpreted as a whole, which is patentable. Applicant has emphasized certain features in the claims as clearly not present in the cited references, as discussed above. However, Applicant does not concede that other features in the claims are found in the prior art. Rather, for the sake of simplicity, Applicant is providing examples of why the claims described above are distinguishable over the cited prior art.

For all the reasons advanced above, Applicant respectfully submits that the rejections have been overcome and should be withdrawn.

For all the reasons advanced above, Applicant respectfully submits that the Application is in condition for allowance, and that such action is earnestly solicited.


Authorization

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby

Serial No. 09/307,187

authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to deposit account no. 08-0219.

Respectfully submitted


Irah H. Donner
Registration No. 35,120

Date: 8/30/04

WILMER CUTLER PICKERING HALE and DORR LLP
300 Park Avenue
New York, NY 10022
Phone: (212) 937-7246
Fax: (212) 937-7300

RECEIVED
CENTRAL FAX CENTER

AUG 30 2004

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RONALD M. CASTONGUAY, and
GARY B. CROCKETT

Appeal No. 95-2004
Application 07/597,370¹

ON BRIEF

Before THOMAS, KRASS and LEE, Administrative Patent Judges.

LEE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 6 and 13-15. Claims 1-5 and 7-12 have been canceled. No claim has been allowed.

References relied on by the Examiner

Fields et al. (Fields)

5,111,391

May 1992

¹ Application for patent filed October 12, 1990.

Appeal No. 95-2004
Application 07/597,370

NAMES[®] Scheduling System "Telemarketing Know-How from AT&T",
issued 1989 by AT&T. (AT&T Names)

The Rejections on Appeal

Claims 6 and 13-15 stand finally rejected under 35 U.S.C.
§ 103 as being unpatentable over Fields and AT&T Names.

The Invention

The invention is directed to a method for planning and managing personnel in an environment in which there is a constantly varying event load by the time of day and by the day of week. The personnel includes a team of servers to service the event load. Claim 13 is the only independent claim and reads as follows:

13. A method using a central computer and a plurality of workstation computers connected to the central computer, for planning and managing personnel in an environment in which there is a constantly varying event load by time of day and by day of week, the personnel including a team of servers responsible for servicing the event load, each of the central and workstation computers including a processor, comprising the steps of:

(a) organizing the team of servers responsible for servicing the constantly varying event load into a plurality of management units, each management unit having at least one workstation computer for managing one or more groups of individual servers at the management unit and for communicating with the central computer;

Appeal No. 95-2004
Application 07/597,370

(b) using the processor of the central computer to generate a forecast of (i) an event load expected to occur during intervals of a forecast time period, and (ii) a number of servers required to service the expected event load during each interval of the forecast time period;

(c) using the processor of the central computer to allocate the expected event load among the plurality of management units according to a

predetermined number of servers expected to be available at each management unit during each interval of the forecast time period; and

(d) using the processor of the central computer to reallocate the expected event load among the plurality of management units during one or more intervals of the forecast time period, the reallocated event load being communicated from the central computer to the management unit workstation computers.

Opinion

We do not sustain the rejection of claims 6 and 13-15 as being unpatentable over Fields and AT&T Names.

The appellants correctly point out that claim 13 specifies a plurality of management units which together service an overall event load and each management unit includes one or more groups of individual servers. The examiner cited to Fields as disclosing a staff scheduling system for managing a "multi-unit operation" (answer at 4,

Appeal No. 95-2004
Application 07/597,370

lines 13-14), and states (answer at 4, lines 19-22): "Since this is a multi-unit system or a multi-unit organization, it would have been obvious to one of ordinary skill in the art that each of these location does work in a cooperative manner." We disagree with the examiner. The multiple units or stores in Fields do not cooperate with each other to service an overall event load.

In Field's disclosure, there is no overall event load. Each store location has its own unique event load which is served by

resources specific for that location. The examiner has not established that any event load is allocated across plural store locations. In that regard, claim 13 specifically requires: "allocating the expected event load among the plurality of management units according to a predetermined number of servers expected to be available at each management unit during each interval of the forecast time period." It is implicit in claim 13 that plural management units would participate at any one time to respond collectively to the total event load. That is also consistent with the

Appeal No. 95-2004
Application 07/597,370

appellants' specification. The examiner has not demonstrated in Fields a collective servicing of the total event load by servers from different operational units according to the availability of servers at the various units.

Fields involves the creation of an optimum staff schedule for each store location based on the specific requirements of the location. Note that in column 1, lines 46-52, Fields states:

Each remote location has unique differences in layout, sales patterns, sales volume, and product mix. These differences are further complicated by the uniqueness of each day of the week and seasonality of the year. Such variables must be combined and examined to create a unique optimum staff schedule for each remote location.

The mere fact that Fields refers to a multi-unit operation does not satisfy or reasonably suggest the claim feature at issue.

The appellants correctly assert that the examiner has misconstrued Fields (Br. at 7). The appellants' claimed allocating step is not found or reasonably suggested by Fields. It has not been shown that the multiple units of Fields cooperate to

Appeal No. 95-2004
Application 07/597,370

share the responsibility for handling a collective event load.

The examiner answers that the appellants' claims do not positively recite "working in a cooperative manner." That is true, but the claims require a plurality of management units to service the event load, and it is recited that the expected event load is allocated among the different management units. Thus, the management units must cooperate at least in that manner. The use of a central authority or station to make the individual schedules of many store units whose individual event loads and personnel resources are separate from each other does not satisfy the appellants' claims.

We reject the appellants' other argument that Fields does not disclose for each store a constantly varying event load by time of day and by the day of week. In our view, because the tasks to be serviced in each store varies by the time of day and by the day of week, Fields does disclose, for each store unit, a constantly varying event load.

The examiner relied on AT&T Names to try to account for the "reallocating" step required by the appellants' claim 13 (answer

Appeal No. 95-2004
Application 07/597,370

at 3-4). But the deficiency of Fields is not made up by the disclosure of AT&T Names. While AT&T Names refers to a "team" for handling calls, the appellants correctly argue (Br. at 12) that the team of AT&T Names is not subdivided into a plurality of management units which cooperate to handle a total event load. Thus, the allocating step of claim 13 is also lacking in AT&T Names, as it is lacking in Fields. The system of AT&T Names (at 2-1) forecasts work volume based on historical data, determines how many people are needed to achieve a desired level of service, and selects the people based on their availability. But the examiner has not identified any disclosure which reasonably would have suggested "allocating the expected event load among the plurality of management units according to a predetermined number of servers expected to be available at each management unit during each interval of the forecast time period."

Moreover, claim 13 further requires the step of reallocating the expected event load among the plurality of management units during one or more intervals of the forecast time period. We disagree with the appellants' contention that AT&T Names does not disclose or reasonably suggest changing

Appeal No. 95-2004
Application 07/597,370

schedules during an actual forecast time period based on the actual event load for that period. On pages 3-18, AT&T Names states that an automated

telemarketing center cannot afford to rely on information that is two or three days old and the best schedule will reflect "up to the minute" changes. It also states that adjustments in schedules can be done any time after the schedule has been created. Thus, in our view, the disclosure reasonably would have suggested making changes during the actual forecast period. Nevertheless, the examiner has failed to identify or otherwise explain any reasonable suggestion stemming from AT&T Names for a plurality of management units which collectively service a event load, whether by allocation or reallocation of the event load.

From the bottom of page 13 to the top of page 14 in the answer, the examiner states that AT&T Names discloses having more than one team of call handlers and therefore implies having more than one supervisory group, citing pages 3-3 and 3-16. However, we can find no such disclosure on page 3-3 of

Appeal No. 95-2004
Application 07/597,370

AT&T Names, and on page 3-16 of the reference, we find only a single reference to "each team leader in the office." The examiner is reading far too much into the phrase "each team leader in the office." The phrase does not reasonably disclose or suggest that the entire event load of incoming calls at any one time is collectively serviced by a plurality of teams/management units which are allocated respective portions of the entire load. It is mere

speculation that this is the case. Moreover, the other parts of the AT&T Names reference do not corroborate the picture as envisioned by the examiner. It may be that for each shift the team is under the management of a team leader and several individuals in the office are qualified to serve in that role. Or, there may be more than one team but each team is responsible for a separate shift. Note also that on page 3-3, AT&T Names indicates that all employees are in one supervisory group. The examiner simply has not established that AT&T Names discloses or would have reasonably suggested that more than one management unit or team is called upon at any one

Appeal No. 95-2004
Application 07/597,370

time to collectively service an incoming total event load.

We reiterate that in our view the allocating step of claim 13 requires plural management units to be active in any one time period or shift. It would be unreasonable to regard the claimed allocation feature as being met by merely having more than one employee shift in one 24 hour period. While each shift would presumably handle the entirety of the event load to another shift during the period of that shift and thus no allocation of the event load occurs, it is implicit in the claims that the plural management units must share responsibility for work in the same period or shift. In any event, the examiner has not taken the view that merely having different shifts in the day satisfies the claimed allocation feature. Neither do we.

For the foregoing reasons, we do not sustain the rejection of claim 13, and claims 6 and 14-15 all of which depend from claim 13, over Fields and AT&T Names.

Appeal No. 95-2004
Application 07/597,370

Conclusion

The rejection of claims 6 and 13-15 under 35 U.S.C. § 103
as being unpatentable over Fields and AT&T Names is reversed.

REVERSED

JAMES D. THOMAS)
Administrative Patent Judge)

ERROL A. KRASS)
Administrative Patent Judge)

JAMESON LEE)
Administrative Patent Judge)

BOARD OF PATENT
APPEALS AND
INTERFERENCES

Appeal No. 95-2004
Application 07/597,370

David H. Judson
Hughes & Luce
1717 Main Street
Suite 2800
Dallas, TX 75201